



## Federal Housing Finance Board

1625 Eye Street N.W., Washington, D.C. 20006

Telephone: (202) 408-2980

Facsimile: (202) 408-2895

[crosss@fhfb.gov](mailto:crosss@fhfb.gov)

December 13, 2006

Mr. Richard S. Swanson  
President and Chief Executive Officer  
Federal Home Loan Bank of Des Moines  
907 Walnut Street  
Des Moines, Iowa 50309-3513

NO-ACTION LETTER:

Federal Home Loan Bank of Des Moines: Noncompliance with Requirement to Deposit Unused or Uncommitted 2006 Affordable Housing Program Funds in Affordable Housing Reserve Fund (12 C.F.R. Part 951) (2006-NAL-02)

Dear Mr. Swanson:

This responds to your request of September 8, 2006, for a No-Action Letter with respect to the disposition of up to \$2.1 million of the Federal Home Loan Bank (Bank) of Des Moines's required \$25.5 million statutory contribution (as restated) of Affordable Housing Program (AHP) funds for calendar year 2006, which will not be used or committed by year-end. Specifically, the Bank requests that it not be required to deposit 90 percent of the AHP funds that have not been used or committed by the end of 2006 in an Affordable Housing Reserve Fund (Reserve Fund), pursuant to section 10(j)(7) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. § 1430(j)(7), and section 951.15(a)(1) of the Federal Housing Finance Board's (Finance Board) AHP regulation, 12 C.F.R. § 951.15(a)(1). As an alternative, the Bank proposes to carry over the \$2.1 million in unused or uncommitted 2006 AHP funds to be committed during 2007 and 2008.

Your request is made in light of a substantial increase in the amount of the Bank's required annual AHP contribution for 2006, as a result of the Bank's restatement of 2005 earnings, on which the 2006 AHP contribution is based. Your letter and supplemental information provided by the Bank indicate that this extension is necessitated by the significant increase in 2005 earnings, which more than doubled the amount of the required 2006 AHP contribution from \$10.2 million to \$25.5 million. The Bank states that it will not be able to commit the full amount by year-end, and may have up to \$2.1 million remaining, which the Bank proposes to commit in 2007 and 2008. The Bank proposes to carry over this amount, in combination with

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\$3.2 million in AHP funds resulting from the Bank's restatement of its earnings for the years 2001-2004,<sup>1</sup> and to commit this total \$5.3 million during 2007 and 2008 in addition to the Bank's statutorily required AHP contributions for those years.

The Bank has attempted to use a significant amount of the additional AHP contribution for 2006. The Bank originally committed \$18.8 million in 2006 to projects submitted in its competitive application program funding round and to the Bank's homeownership set-aside programs, leaving a balance of \$6.7 million in uncommitted AHP funds. The Bank has increased the amount of subsidy available for its two existing homeownership set-aside programs and three newly established homeownership set-aside programs by \$3.6 million. In addition, the Bank has committed more than \$1 million to fund additional projects and alternate projects from the 2006 competitive application program funding round. Nevertheless, the Bank states that it is unable to commit the remaining balance of \$2.1 million in uncommitted AHP funds for three principal reasons. First, there have been recent significant changes in the Bank's management and senior staff, the manager of the Community Investment Department, and some staff in the Community Investment Department. Second, the Bank lacks current staff capacity to handle this amount of AHP subsidies in one year, and it will take time for the new personnel to become acclimated to the Bank and the AHP. Third, the current level of demand for AHP subsidies has declined over the past two years and the staff needs additional time and training to market the availability of AHP funds to members and potential affordable housing sponsors.

The Bank Act requires that each Bank contribute annually a statutorily prescribed amount of its annual net earnings for the previous year to its AHP. See 12 U.S.C. § 1430(j)(5)(C); 12 C.F.R. § 951.2. The Bank Act further provides that if a Bank fails to utilize or commit the full amount of its required annual AHP contribution in any year, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in a Reserve Fund established and administered by the Finance Board. See 12 U.S.C. § 1430(j)(7); 12 C.F.R. § 951.15(a)(1). The Bank requests a No-Action Letter that will allow the Bank to retain control over its uncommitted 2006 AHP funds by not requiring it to deposit these amounts in a Reserve Fund if the funds have not been committed by the end of 2006, and allow the Bank to commit the funds during 2007 and 2008.

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<sup>1</sup> In addition to restating earnings for 2005, the Bank restated earnings for each year from 2001-2004, resulting in an aggregate increase in AHP restated earnings of \$3.2 million for 2001-2004. This No-Action Letter does not include the Bank's AHP contributions for the years 2001-2004, because the AHP requirement to deposit unused or uncommitted AHP funds in a Reserve Fund applies only to current year contributions. The Bank's application of changes in the AHP contributions in years prior to the current year are subject to the Finance Board's Advisory Bulletin 2006-AB-01, "Affordable Housing Program (AHP) and Resolution Funding Corporation (REFCORP) Contributions," which clarifies the adjustments that should be made to required annual AHP contributions resulting from financial restatements or other cumulative adjustments to earnings.

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In light of these circumstances, the Office of Supervision will not recommend to its Board of Directors that supervisory action be taken against the Bank, nor will the Office of Supervision undertake any such supervisory action, for noncompliance with the requirement of 12 U.S.C. § 1430(j)(7) and 12 C.F.R. § 951.15(a)(1) that the Bank deposit into a Reserve Fund 90 percent of the Bank's 2006 statutory AHP contribution that is unused or uncommitted by December 31, 2006. The Bank must use or commit the unused or uncommitted AHP funds, plus the \$3.2 million in restated AHP contributions for the years 2001-2004, by the end of 2008. In addition, the Bank must contribute to its AHP an amount equal to the interest on the outstanding uncommitted balance of the AHP funds resulting from the prior years' restatements. The interest calculation should be based on the one-year Treasury rate published in the Wall Street Journal, on the first day of each quarter, interest compounded quarterly, until such time as no amount of the restated funds remains uncommitted.

This No-Action Letter expresses only the position of staff and may be modified or superseded by the Board of Directors of the Finance Board. Because this No-Action Letter is based upon the Bank's representations, any change in the facts or circumstances from those represented by the Bank may warrant a staff recommendation that the Finance Board take appropriate supervisory action. If you have any questions, please contact Charles E. McLean, Associate Director, Office of Supervision, at 202-408-2537.

Sincerely,



Stephen M. Cross  
Director  
Office of Supervision

cc: Karen Walter  
Charles E. McLean  
John P. Kennedy  
Anthony Cornyn  
Andre D. Galeano  
Dennis Walker